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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In RE: Applications of)	MM Docket No. 93-156
)	
TRINITY CHRISTIAN CENTER OF SANTA)	File No. BRCT-911129KR
ANA, INC.. d/b/a TRINITY BROAD-)	
CASTING NETWORK)	
<i>For Renewal of License of</i>)	
<i>Station WHSG(TV), Monroe, Georgia</i>)	
)	
and)	
)	
GLENDAL E BROADCASTING COMPANY)	File No. BPCT-920228KE
<i>For Construction Permit</i>)	
<i>Monroe, Georgia</i>)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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October 7, 1994

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SUMMARY

Glendale's request for a waiver of the television channel spacing rules (Rule 73.610) cannot be granted, and its application is therefore ungrantable. Commission policy requires that an applicant for a short-spacing waiver must make a threshold showing that no fully spaced sites are available. Glendale has made no such showing. While Glendale identified at the outset the area where a fully spaced site should be located, it never explored the availability of sites within that fully spaced area. Had it conducted such a required search it would have learned that there is a fully spaced site available, the WFOX(FM) tower.

There is no prejudice or disadvantage to Glendale as a challenger in a renewal proceeding in requiring that it meet the short-spacing requirements. Instead, Glendale seeks preferential treatment since the TV channel spacing rule does not permit incumbent short-spaced TV stations to relocate to another short spaced site without meeting the threshold requirement of establishing that there are no fully spaced sites available. Since WHSG-TV would have to specify a fully spaced site if it attempted to relocate, Glendale must be required to meet the same standard, particularly because it proposes to increase the existing grandfathered short spacing, something WHSG-TV could not do under the rules.

Moreover, Glendale's proposal would severely restrict the ability of a Montgomery channel 63 applicant to locate a fully spaced site, a result highly disfavored by Commission policy. Glendale has also not shown that in fact there are sites actually available to a

channel 63, Montgomery applicant within the remaining area it identified. As a result its waiver must be denied, and its application thus dismissed.

Trinity is entitled to a renewal expectancy for its operation and performance during the WHSG-TV renewal period. It had a strong, continuous ascertainment process, and it broadcast a variety of programs, including informational and public affairs programs, addressing important community issues. Further, the children's programming broadcast by WHSG was particularly note-worthy and warrants special merit.

Because Glendale is not entitled to a short-spacing waiver, Trinity is the only qualified applicant. Even if Glendale were granted a waiver, however, Trinity is entitled to a renewal expectancy. Trinity's renewal of the WHSG-TV, Monroe, Georgia license should therefore be granted.

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TO: The Honorable Joseph Chachkin
Administrative Law Judge

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity" or "TBN"), by its attorney, now submits its Proposed Findings of Fact and Conclusions of Law for the resolution of the issues in this proceeding.

I. INTRODUCTORY STATEMENT

1. This proceeding involves the application of Trinity for the renewal of its license for commercial television station WHSG, Channel 63, Monroe, Georgia, and the mutually exclusive application of Glendale Broadcasting Company ("Glendale") for a construction permit for a new commercial television station on channel 63, Monroe,

Georgia. By Hearing Designation Order, DA 93-602, released June 14, 1993, the

Commission designated this proceeding for hearing on the following issues:

- (1) To determine with respect to Glendale Broadcasting Company:
 - (a) If circumstances exist which would warrant a waiver of section 73.610 of the Commission's rules;
 - (b) Whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
- (2) To determine which of the proposals would, on a comparative basis, better serve the public interest;
- (3) To determine in light of the evidence adduced pursuant to the following issues, which of the applications should be granted.^{1/}

2. By Order, FCC 93M-492 (released July 27, 1993), the Presiding Judge resolved Issue 1(b), the air hazard issue, in Glendale's favor subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operations, or take such immediate corrective action as is necessary to eliminate the harmful

^{1/} In Footnote 1 of the Monroe Hearing Designation Order, the Commission noted that:

"... any grant of Trinity's renewal application in the [Monroe] proceeding shall be subject to whatever action the Commission deems appropriate in light of the final resolution of issues a and b as specified in the Hearing Designation Order [8 FCC Rcd. 2475 (1993)] in the Miami proceeding, MM Docket No. 93-75."

The Commission then instructed the Presiding Judge to proceed with all other aspects of the Monroe comparative renewal hearing.

interference. This condition expires after one year of interference free operation.

3. By Order, FCC 93M-516 (released August 10, 1993), the Presiding Judge accepted a July 22, 1993 "Petition for Leave to Amend" filed by Glendale Broadcasting Company reporting the specification of a misrepresentation or lack of candor issue against Glendale in the Miami, Florida television proceeding (MM Docket No. 93-75) involving low power television applications for extensions or broadcast construction permits, and ruling that:

Any grant of Glendale Broadcasting Company's application in the instant proceeding shall be subject to whatever action the Commission deems appropriate in light of the final resolution of the issue specified in Memorandum Opinion and Order, FCC 93M-469, released July 15, 1993, in MM Docket No. 93-75.

4. By Memorandum Opinion and Order, FCC 93M-640 (released October 7, 1993) the Presiding Judge similarly noted that an additional character issue added against Glendale in the Miami proceeding (MM Docket No. 93-75) required imposition of the following condition regarding Glendale's application in this proceeding:

Any grant of Glendale Broadcasting Company's application in the instant proceeding shall be subject to whatever action the Commission deems appropriate in light of the final resolution of the issue specified in Memorandum Opinion and Order, FCC 93M-631, released October 4, 1993, in MM Docket No. 93-75.

5. A prehearing conference was held on August 13, 1993 (Tr. 3). The hearing was conducted on May 17-18, 1994 (Tr. 15-211).

6. The following exhibits were accepted into the record:

Joint Exhibit 1:	Stipulated Testimony on the Diversification and Media Interests of the Officers and Directors of Trinity Christian Center of
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	Santa Ana, Inc., d/b/a Trinity Broadcasting Network (Tr. 151).
Joint Exhibit 2:	Stipulated Testimony of John P. Allen (Tr. 151-2).
Joint Exhibit 3:	Stipulated Testimony of Gregory B. Daly (Tr. 151-2).
Joint Exhibit 4:	Stipulation RE Public Service Announcements (Tr. 151-2).
Joint Exhibit 5:	Stipulation--Testimony of Scott W. Jackson (Tr. 151-2).
Joint Exhibit 6:	Stipulation--Testimony of Lindee C. Connolly (Tr. 153-4).
Joint Exhibit 7:	Stipulated Testimony of George F. Gardner (Tr. 153-4).
Joint Exhibit 8:	Stipulation--Testimony of John J. Mullaney (<u>Order</u>, 94M-473, released August 11, 1994).
Trinity Exhibit 32:	Testimony of Scott W. Jackson (Tr. 102).
Trinity Exhibit 33:	Testimony of Lindee C. Connolly (Tr. 104).
Trinity Exhibit 34:	Testimony of Randy Mullinax (Tr. 130).
Glendale Exhibit 1:	Declaration of George F. Gardner--the Applicant (Tr. 160-2).
Glendale Exhibit 2:	Declaration of George F. Gardner--Diversification (Tr. 160-2).
Glendale Exhibit 3:	Testimony of John J. Mullaney: Short Spacing Issue (Tr. 162, 176).
Glendale Exhibit 4:	August 2, 1993 Statement of Randy Mullinax (Tr. 194).
Glendale Exhibit 5:	October 21, 1987 construction permit of Monroe Television, Inc. for channel 63,

Monroe, Georgia (BPCT-8612166L) (Tr. 195).

The record was closed on August 11, 1994. Order, FCC 94M-473 (released August 11, 1994).

II. PROPOSED FINDINGS OF FACT^{2/}

A. Glendale's Short-spacing Issue

1) Glendale Never Searched for a Fully Spaced Site

7. Glendale filed its application for channel 63, Monroe, Georgia on February 28, 1992 (Jt. Ex. 7, p. 1). In January 1992, nearly two months before filing, Glendale's engineer, John J. Mullaney, prepared a map identifying the area where Glendale would need to locate a tower site to meet the Commission's channel spacing rules (rule 73.610(b)) (Jt. Ex. 8, p. 1; Jt. Ex. 3, p. 1). Gregory B. Daly of Telecommunications Site Acquisition, Inc., was engaged by Glendale to locate its transmitter site (Jt. Ex. 3, p. 1). A copy of the map identifying the area where a fully spaced site could be located was provided by Mr. Mullaney to Mr. Daly, Mr. George F. Gardner, and Mr. Lewis Cohen (Jt. Ex. 3, p. 1; Jt. Ex. 8, p. 1). Mr. Daly did not, however, search for a fully spaced site (Jt. Ex. 3, pp. 1-2; Jt. Ex. 7, p. 2). Mr. Daly only looked for a site near Trinity's existing tower site for WHSG, Channel 63 (Jt. Ex. 3, pp. 1-2; Jt. Ex. 8, p. 2).

^{2/} References to the record are as follows: Joint Exhibits are "Jt. Ex. __, p. __"; Trinity Exhibits are "TBN Ex. __, p. __"; Glendale Exhibits are: "Glendale Ex. __, p. __"; and transcript references are "Tr. __."

8. Trinity's site for WHSG is a grandfathered short-spaced facility to the allocation for noncommercial channel 63, Montgomery, Alabama (Jt. Ex. 3, p. 2; Glendale Ex. 3, p. 4). At no time did any principal of, or consultant for, Glendale ever investigate whether there were fully spaced sites available for Glendale's use (Jt. Ex. 7, pp. 2, 3; Jt. Ex. 8, p. 2; Jt. Ex. 3, p. 3; Jt. Ex. 2, p. 2). Glendale gave no consideration to any site that was fully spaced (Id.). It had no knowledge of any fully spaced site because it made no effort to find such a site (Id.).

9. At the time George Gardner signed Glendale's application for channel 63 he was aware Glendale was seeking a waiver of the Commission's channel spacing rules (rule 73.610) (Jt. Ex. 7, p. 2). He stated that:

At no time during the process of locating Glendale's original antenna site, nor during the preparation of Glendale's application for channel 63 at Monroe, did I or Mary Anne Adams instruct Messrs. Mullaney, Allen or Daly to look for an antenna site that was fully spaced to the channel 63, Montgomery, Alabama allocation. I was thus unaware at the time whether there were any fully spaced sites at which Glendale could propose to locate its antenna site [in compliance with the Commission's channel spacing rules] (Jt. Ex. 7, p. 2).

10. When Glendale amended the location of its proposed site on March 5, 1993, Mr. Gardner again stated no effort was undertaken to locate a fully spaced site, and he was unaware at that time if there were any fully spaced sites where Glendale could proposed to locate (Jt. Ex. 7, pp. 3-4). Mr. Gardner stated:

Neither Ms. Adams nor myself instructed Messrs. Allan, Daly or Mullaney to look for an antenna site which was fully spaced to the Channel 63, Montgomery, Alabama allocation, and no such site was considered by Glendale ... At the time Glendale filed its March 5, 1993, amendment, neither Ms. Adams nor I, nor Messrs. Mullaney, Daly, or Allen, were aware of whether there were any fully spaced sites available (Jt. Ex. 7, pp. 3-4).

11. The only sites Glendale submitted to the FAA and the Commission for approval were its original February 28, 1992 site, and its March 5, 1993 site (Jt. Ex. 7, p. 4). Both sites were short spaced to the Montgomery channel 63 allocation (Jt. Ex. 7, pp. 2, 3-4).

2) Trinity's Grandfathered Operation of WHSG, Channel 63

12. Full spacing under the Commission rules (73.610(b)) between Channel 63, in Monroe and Montgomery is 280.8 km (Glendale Ex. 3, pp. 3-4). When Trinity was authorized by the Commission to construct WHSG (BMPCT-890809KE) it was fully spaced to the authorized construction of channel 63, Montgomery, Alabama (Glendale Ex. 3, p. 4). The channel 63 Montgomery authorization was held by The Troy State University (BMPED-890901KE) (Id.). Trinity completed construction as authorized and began broadcast operations of WHSG on February 22, 1991 (TBN Ex. 32, p. 1). In 1990 the Commission cancelled The Troy State University's authorization (Glendale Ex. 3, p. 4). At that time, in accordance with Commission rule 73.611(b)(3), the Montgomery channel 63 reference point was converted to the coordinates of the Montgomery main post office.^{3/} This conversion created a short-spacing of 18.14 km

^{3/} Mr. Mullaney testified that the Commission "should have specified Troy State's transmitter site as the reference point for the [Montgomery] allocation (Glendale Ex. 3, p. 4). However, Commission Rule 73.611(b)(3) provides that:

"Station separations in licensing proceedings shall be determined by the distance between the coordinates of the proposed transmitter site in one community and:

- (3) the coordinates of the post office of such other community."

between the Montgomery channel 63 allocation and WHSG, and that short spacing remains today (Glendale Ex. 3, pp. 3-4). At no time, however, did Trinity need to request, or have its application processed under, a waiver of the spacing rules. Trinity operates WHSG with a directional antenna 1,190 feet above average terrain, with a maximum ERP of 5,000 kw (Glendale Ex. 3, p. 7).

3) Glendale's Proposal

13. When Glendale filed its original application it knew its proposed site did not comply with the Commission's channel-spacing rules (Jt. Ex. 7, p. 2). Glendale proposed to construct a tower at NL 33° 46' 17", WL 84° 00' 25" which was 1,077 feet (328.3 meters) above ground (Jt. Ex. 7, p. 1). Because this was more than 500 feet above ground, Glendale had to request the FAA to undertake an aeronautical study as part of the process to obtain a determination of no hazard to air navigation (Jt. Ex. 2, p. 1). Following that study, the FAA informed Glendale's aeronautical consultant (John Allen) in September 1992, that Glendale's proposal was a hazard to air navigation because it was in a VFR (Visual Flight Rule) flyway and would be rejected (Jt. Ex. 2, pp. 1-2). Mr. Allen knew at that time that if Glendale proposed a new tower site to the FAA "more than one mile from its original site or the Trinity tower, a new aeronautical study would be required" (Jt. Ex. 2, p. 2).^{4/} Accordingly, Glendale proposed an alternate tower site at coordinates NL 33° 44' 38", WL 84° 00' 39" with a tower 1,089 feet above ground (Jt. Ex. 2, p. 3; Jt. Ex. 7, p. 3). Mr. Allen stated that:

^{4/} The FAA's determination that Glendale's proposed tower interfered with a VFR flyway was based on the "goal post" configuration if created with the existing WHSG tower (Jt. Ex. 2, p. 2).

... a new Notice of Proposed Construction or Alteration [] would have [required] a new aeronautical study, including the solicitation and review of comments from the aeronautical community. Such a study would have taken several months to complete, and there would always be a possibility that the FAA would reject the new tower construction proposal ... [t]he only circumstance where no FAA notice or approval was required are: (1) when construction is done on an existing tower and there is no increase in the overall height of the tower (such as a side-mounting of a new antenna); and (2) when the proposed tower is less than 200 feet above ground level (Jt. Ex. 2, pp. 2-3; underlining added).

Because it would take several months for a new study, which also ran the risk of being rejected, Glendale made no search for a fully spaced site (Jt. Ex. 2, p. 2; Glendale Ex. 3, p. 6). Instead, it confined itself to searching for a site only within the one mile area around its rejected tower site, or WHSG's tower site (Jt. Ex. 2, p. 2). Mr. Mullaney described Glendale's reasons for not seeking a fully spaced site at this juncture as follows:

At that point it was not practical for Glendale to specify a site which was more than 280.8 km from the Montgomery reference point. Even if a site was available in [the fully spaced] area, the FAA would not approve Glendale's proposal in their area without conducting a new aeronautical study and requesting a new round of comments from the public. Such a process would take several months (6-8 months), and I knew that the Commission requires applicants to amend that applications promptly to resolve a problem with their application. I also knew if Glendale amended to a site in a properly spaced area, it was always possible that the FAA could reject that site ... (Glendale Ex. 3, p. 6; underlining added).

14. On March 5, 1993, Glendale amended its current proposed site, and again asked for a waiver of the Commission's channel-spacing rules (Jt. Ex. 7, p. 3; Jt. Ex. 2, p. 3). This site was given FAA approval on December 16, 1992 (Glendale Ex. 3, p. 6; Jt. Ex. 2, p. 3). This site is short-spaced to the channel 63, Montgomery allocation by 18.4 kilometers, .26 kilometers more than the grandfathered site of WHSG (Glendale

Ex. 3, pp. 6, 11, 12).^{5/} No other sites were submitted to the FAA for approval, and at no time did Mr. Allen know, or give any consideration during the FAA approval process, of the Commission's channel spacing rules (Jt. Ex. 2, p. 3; Jt. Ex. 7, pp. 2-4).

15. Mr. Mullaney stated that Glendale's March 1993 proposal would "provide greater protection to the Montgomery allocation than a hypothetical full-spaced station operating with the maximum facilities permitted by the Commission's rule (Glendale Ex. 3, p. 7). However, no site within the fully spaced area identified by Glendale was specified for this assertion (*Id.*). If Glendale's application with its currently proposed short-spaced site were granted, a 517 square kilometer area would be left for a channel 63, Montgomery applicant to locate a fully spaced site, but no site is identified as actually being available (*Id.*).

4) The WFOX Tower Site

16. At the outset of its activities, Glendale's Mr. Mullaney had identified the area where Glendale could locate a fully spaced channel 63, Monroe site (Jt. Ex. 8, p. 1; Jt. Ex. 3, p. 1). The broadcast tower of WFOX(FM), Gainesville, Georgia, is within that fully spaced area (Glendale Ex. 3, p. 11; Jt. Ex. 8, p. 2). Glendale also knew that locating on an existing tower, when the overall height did not increase, did not require approval from the FAA (Jt. Ex. 2, pp. 2-3).

17. The WFOX tower is owned by Shamrock Broadcasting, Inc. ("Shamrock"), and is located at NL 34° 07' 32", WL 83° 51' 31" (TBN Ex. 34, p. 1).

^{5/} Glendale characterizes this increase of the short-spacing by 0.26 kilometers as "de minimis" (Tr. 122).

The previous permittee of WHSG, Monroe Television, Inc., had been authorized to construct and operate WHSG from the WFOX tower (Glendale Ex. 5). The chief engineer of Shamrock's WFOX, Randy Mullinax, testified that when the WFOX tower was constructed in 1984 "it was specifically designed to accommodate a high powered television antenna" such as a Bogner or Dielectric antenna (TBN Ex. 34, p. 1; see also Glendale Ex. 4; Tr. 196-7). Mr. Mullinax went on to state:

At all times since the tower was constructed, space has been available for a high powered television antenna, such as a Bogner or Dielectric antenna ... (TBN Ex. 34, p. 1; Glendale Ex. 4).

Glendale's original February 1992 application for channel 63 proposed a Dielectric antenna, as did its March 1993 amendment (Jt. Ex. 7, pp. 1, 3).

18. Mr. Mullinax further testified that the WFOX tower had been:

... purposely over-designed to accommodate three FM transmitting antennas[,] to one high power, one low power UHF transmitting antenna[,] and a myriad of other facilities for the purpose of facilitating leasing space on the tower (Tr. 206).

19. WFOX has been willing to negotiate in good faith, upon inquiry with prospective tenants or users for lease of space on the tower, particularly for a high power UHF antenna similar to that of Glendale (TBN Ex. 34, p. 2). Even though Glendale had identified the area where it could locate a fully spaced site, and that area included the WFOX tower, no representative of Glendale made any inquiry of WFOX about space on the tower (TBN Ex. 34, p. 2; Jt. Ex. 3, pp. 2, 3; Jt. Ex. 7, pp. 2, 3, 4; Jt. Ex. 8, p. 2). Without a grant of its request for waiver of the Commission's channel-spacing rule (73.610) Glendale's application can not be granted (Jt. Ex. 7, pp. 3-4).

B. WHSG-TV Renewal Expectancy Standard

1) Introduction

20. Trinity inaugurated program service on WHSG-TV (hereinafter sometimes also referred to as "the Station") on February 22, 1991, when it began broadcasting 16 hours per day (TBN Ex. 32, p. 1). The number of hours broadcast increased in increments to 24 hours per day on February 28, 1991, and the Station continued broadcasting 24 hours per day, except for Sundays, when the Station shut down for four hours to allow for equipment maintenance, since that date (Id.). WHSG-TV's license term expired on April 1, 1992 (hereinafter referred to as "the License Term"^{6/}) (Id.). Scott Jackson, formerly a Master Control Operator with TBN's station WLXI-TV, Greensboro, North Carolina, was transferred to TBN's new station in February 1991, and worked as the "Station Supervisor," later changed to "Station Manager," throughout the License Term (Id.).

2) Ascertainment of Community Needs

21. The procedures used by WHSG-TV to ascertain the problems, needs and interests of the community evolved during the License Term as Mr. Jackson learned more about his job and TBN procedures (TBN Ex. 32, p. 2). He first consulted former colleagues at WLXI-TV for the proper procedures, and received instructions from TBN's public affairs department (Id.). The end product of the ascertainment process

^{6/}. Glendale filed its competing application for channel 63 in Monroe, Georgia on February 28, 1992 (Jt. Ex. 7, p. 1). In those instances where a reference is made to a program or public service announcement (hereinafter referred to as a "PSA") after Glendale's application was filed, it will be noted.

was the Quarterly Report placed in the Station's public file within 10 days after the end of each calendar quarter (Id.). These Quarterly Reports were received into evidence (TBN Ex. 32, Tab B). The first Quarterly Report for WHSG-TV was prepared by TBN in California and placed in the public file without alteration (TBN Ex. 32, p. 3; TBN Ex. 32, Tab B, pp. 1-11). So soon after the Station went on the air Mr. Jackson was so new to his job that he did not realize that ascertainment of the community's needs were part of his responsibility (TBN Ex. 32, p. 3).

22. During the second calendar quarter Mr. Jackson began reading the daily edition of The Atlanta Journal Constitution (Id.). Mr. Jackson kept a tally of mentions of each problem or need, and articles which discussed various problems and issues were cut-out and kept in a folder (Id.). The list of problems compiled during the second calendar quarter were wholly based on problems mentioned in The Atlanta Journal Constitution (Id.).

23. In subsequent quarters, Mr. Jackson, or a Master Control Operator whom Mr. Jackson supervised, Ben D'Amico, regularly called community leaders in the Station's service area asking them to identify what they thought were the most significant problems and needs in the service area (TBN Ex. 32, p. 4). During the License Term no community leaders from Monroe or Walton County, Georgia were interviewed (Jt. Ex. 5, p. 2). The Atlanta Journal Constitution was also read or reviewed on a daily or weekly basis, and articles mentioning problems continued to be cut-out and kept in a folder (Id.). Mr. Jackson did not make use of The Walton Tribune, a newspaper published in Monroe (Jt. Ex. 5, p. 1). Community leaders were

identified by reference to the newspaper accounts reviewed, and by doing research, such as looking up organizations in the telephone book (TBN Ex. 32, p. 5). As part of the Station's standard procedure Mr. Jackson and Mr. D'Amico were given the goal of identifying and interviewing, each quarter, at least one leader representing each of 19 different categories of organizations or interests (Id.). These categories included: charities; religion; labor; consumer affairs; professions; public health and safety; organizations of and for youth; government; business; military; agriculture; education; civic and fraternal organizations; organizations of and for minorities; organizations of and for women; culture; recreation; the elderly; and, the environment (TBN Ex. 32, p. 5; TBN Ex. 32, Tab C).

24. Both Mr. Jackson and Mr. D'Amico used a standard technique or format when calling community leaders (TBN Ex. 32, p. 4). When Mr. Jackson or Mr. D'Amico called an organization representing a particular group or interest, both ensured that the person interviewed was a legitimate representative of that organization and was qualified to speak for that organization (Id.). Generally the interviewer asked to speak to the president (Id.). During a telephone interview each interviewee was asked to give their name, title, and race or ethnic group, as well as to identify the three most pressing problems facing the community (TBN Ex. 32, pp. 5-6), and the results were recorded on a form (TBN Ex. 32, p. 6). If a community leader mentioned a specific problem, such as "crime," they were encouraged to elaborate (Id.). A form was used both to keep track of the racial and ethnic groups interviewed so that at the end of the

quarter WHSG-TV had a sample of all the races and ethnic groups in the Station's service area, as well as to ensure that no people were re-interviewed (Id.).

25. During each quarter (after the first quarter of the License term) a running count of the problems and needs mentioned by all the sources consulted, including: the Atlanta Journal Constitution; telephone interviews with community leaders; and, for the last calendar quarter of the License Term, comments from the public who called the Station (Id.). The problems and needs identified were noted on a tally sheet, except for the fourth quarter, 1991, when only community leader interviews were counted (TBN Ex. 32, pp. 6-7). During the third and fourth calendar quarter of 1991 a total of 75 community leaders were interviewed each quarter, and during the first quarter of 1992, 25 community leaders were interviewed (Id.).

26. Twice each calendar quarter (January through March, April through June, etc.) a written report was prepared concerning the problems and issues identified by community leaders and the other sources consulted (Id.). The first report, called a Preliminary Report, was prepared after the first month of each calendar quarter (TBN Ex. 32, pp. 3-4), a list of the top five problems and needs identified, beginning with the second calendar quarter of 1991, and the community leader interviews sheets, were sent to the Trinity Public Affairs Department (Id.). The Preliminary Report, including the community leader interview sheets, were reviewed by Trinity's Public Affairs Department (Id.).

27. At the end of each Calendar quarter a Final Report concerning the top five problems and issues which had been ascertained during the preceding quarter was

prepared (TBN Ex. 32, p. 7). The purpose for preparing both the preliminary and final reports to TBN was to ensure that TBN was aware of the problems and needs of the Station's service area so that TBN produced programming that would be responsive to the needs and interests determined in the Station's service area (TBN Ex. 32, p. 4).

Within the next few days after the Final Reports was sent to TBN, the Station received a Quarterly Report from KTBN-TV, Santa Ana, which listed a number of problems and a description of programs broadcast by TBN during the last calendar quarter which were responsive to those problems (Id.). On occasion the list received from Trinity would not include any programs responsive to one of WHSG-TV's service area's top five problems (Id.). In that event Mr. Jackson would call the Trinity Public Affairs Department and ask if any programs responsive to the particular issue identified in WHSG-TV ascertainment and TBN would then send back information on the Trinity programs that were responsive to that issue (Id.). A final Quarterly Report was prepared which listed the problems identified and the program title, times, date of broadcast, duration, source, and a description, taken from TBN's continuity reports, of the programs that were responsive to the top problems and needs of the service area (Id.). The information concerning the programs would be changed to reflect the differences in time zones, although, Mr. Jackson, in error, did not change the "L" for "Local" as the designation of programs such as: Praise the Lord; Treasures Out of Darkness; and, Praise the Lord (TBN Ex. 32, p. 8). Mr. Jackson prepared the Final Report and the completed report was placed in the WHSG-TV public file after the end of each calendar quarter (Id.).

28. On one occasion, during the first quarter of 1992, the issue of "State and Federal Government" was listed as the second most important issue based on the number of mentions during the Station's surveys (Jt. Ex. 5, p. 1). TBN could not find any programs responsive to that problem, however, and Mr. Jackson was instructed by TBN's Public Affairs Department not to mention the problem in the Station's Quarterly Report (Jt. Ex. 5, pp. 2-3).

3) Programming Responsive to Community Needs

29. During the WHSG-TV License Term, TBN had also evolved a system to ensure that programming and the public service announcements ("PSA") produced and broadcast on TBN owned stations also treated the problems, needs and interests of WHSG-TV's service area (TBN Ex. 33, pp. 1-10). During the WHSG-TV License Term TBN had a full time Network Program Director, Ms. Lindee Connolly, whose job was to know the problems and issues important to the communities served by TBN owned stations such as WHSG-TV, to research particular topics and issues to determine who might be a good guest to interview on that topic or issue, and then book guests for TBN's programming, with particular emphasis on its public affairs or talk show programming (TBN Ex. 33, p. 1). Throughout the WHSG-TV License Term Ms. Connolly reported directly to Dr. Paul Crouch (TBN Ex. 33, p. 1).

30. Although Ms. Connolly's responsibilities did not include the Praise the Lord ("PTL") program, she would, on occasion, assist by booking guests for PTL at Mrs. Crouch's request (Id.). Ms. Connolly also reviewed and approved proposed topics

and guests for Feedback, a public affairs program which was produced by the staff of WHFT-TV in Miami but broadcast on the TBN network, and for Joy (Id.).

31. During Ms. Connolly's tenure at TBN, WHSG-TV and other TBN owned stations did ascertainments in their local service area (TBN Ex. 33, p. 2). As noted in ¶¶ 26, 27, above, information concerning the problems and needs of each community identified during the ascertainment process was transmitted by each station to the TBN public affairs department, and supervised by the Public Affairs Director (TBN Ex. 33, p. 3). It was each station's job to supervise the ascertainment process and to provide TBN on a regular basis, at least twice each calendar quarter, with a list of at least five problems in the order of their importance identified by each station's ascertainment in their service area (Id.).

32. Both the preliminary and final reports would include a written list of the top five problems identified by each station in its service area (Id.). Ms. Connolly would receive a written preliminary and final report listing each service areas problems and needs, including WHSG-TV's (TBN Ex. 32, p. 3). In addition to these written lists, Ms. Connolly would, on occasion, be contacted by Mrs. Duff or by the TBN Public Affairs Director to report that a particular problem or issue had come up in a particular community that needed to be covered on a program (Id.). On occasion Dr. or Mrs. Crouch would mention a particular problem or need impacting a community (TBN Ex. 33, p. 5). Ms. Connolly does not now recall any instance, however, when a guest was scheduled to treat a problem peculiar to the WHSG-TV service area (TBN Ex. 33, p. 5), nor can she (or Mr. Jackson) remember scheduling a guest from Monroe or